



**The Comptroller General
of the United States**

Washington, D.C. 20548

SKC

Decision

Matter of: B-230284
File: Air Quality Services
Date: May 16, 1988

DIGEST

1. A bid is nonresponsive if it does not offer to perform a required service at a firm, fixed price where a fixed-price contract is contemplated. Therefore, agency properly rejected protester's bid as nonresponsive where bid schedule required bidders to provide lump sum amounts for certain line items and protester inserted percentage figures but did not indicate the base figure from which to calculate the lump sum.
2. A bidder's intention to be bound to solicitation requirements, including the requirement that a firm price be offered, must be determined from the bid itself at the time of bid opening. Explanations offered after bid opening are not acceptable.
3. Protest that bid schedule is flawed, first raised in protester's comments on agency report, is untimely as protest concerns alleged impropriety in the solicitation which must be filed prior to bid opening.

DECISION

Air Quality Services protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 7-S1-10-03650, issued by the Bureau of Reclamation for removal and disposal of asbestos pipe and boiler insulation from several buildings at the Columbia Basin Civilian Conservation Center, Washington. The agency rejected the bid as nonresponsive because the protester inserted percentage figures for two line items instead of the lump sum prices called for by the solicitation. We deny the protest in part and dismiss it in part.

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The solicitation, issued May 29, 1987, included a bid schedule which listed 8 items; items 2, 3, and 8 identified the buildings targeted for asbestos removal and estimated the quantity of work for each building. Items 1 and 5, which are the subject of the protest, called for work which applied to all of the locations--item 1 was for mobilization and preparatory work and item 5 was for final cleanup work. Beside each of these items on the schedule was the phrase "for the lump sum of \$_____." The solicitation also provided a line at the bottom of the bid schedule for a total price. The protester's low bid contained the figure ".025%" in the blank beside item 1 and the figure ".05%" in the blank beside item 5. There was no explanation on the face of the bid as to what figures these percentages were related to and the protester inserted whole prices in all the other schedule blanks. The agency rejected the bid because the solicitation specified that award must be made on the basis of all the schedule items and it could not determine the amount bid by the protester for items 1 and 5.

Air Quality argues that its bid is responsive as the exact amount of its bid can be easily determined. According to the protester, the base figure to be used to calculate the lump sum amounts for items 1 and 5 is its total bid price at the bottom of the schedule. It explains that it used percentage figures since the amount of work for the specified buildings under the solicitation was based upon estimated quantities and therefore the best way to calculate its costs if the work actually performed differed from the estimate in the solicitation was by use of percentages. The protester also asserts that it was told by an agency employee that it could use percentage figures in items 1 and 5. In any event, the protester asserts, its bid should not be rejected over what it considers a minor technicality when its bid is almost \$26,000 less than the next low bid.

We agree with the agency that Air Quality's bid was nonresponsive. In the absence of the protester's explanation offered after bid opening the amounts bid for item 1 and 5 cannot be determined as there is nothing on the face of the bid which indicates which of the prices inserted on the schedule are to be used as a base for the 2 percentages. To be responsive, a bid must reflect an unequivocal offer to provide the items or services called for in the solicitation so that acceptance of the bid will bind the contractor to perform strictly in accordance with the solicitation's material terms and conditions. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 CPD ¶ 222. Thus, a bid must be rejected if it does not offer to perform a required service at a firm, fixed-price where, as here, a fixed price contract is contemplated. General Electric Co., 66 Comp. Gen. 378, 86-1 CPD ¶ 223.

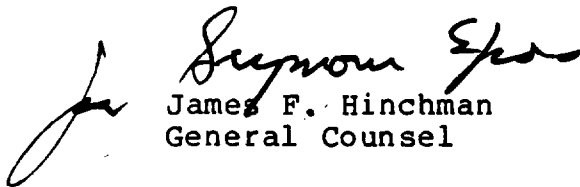
A bidder's intention to be bound to the solicitation requirements, including the requirement that a firm price be offered, must be determined from the bid itself at the time of bid opening. HBH, Inc., B-225126, supra. Explanations offered after bid opening are unacceptable. Freedom Elevator Corp., B-228887, Dec. 7, 1987, 87-2 CPD ¶ 561.

As far as the protester's contentin that it was told it could bid using percentages is concerned, any such oral advice would have been in direct conflict with the express requirement of the solicitation for a fixed lump sum amount. Such advice does not bind the government and bidders rely on oral advice at their own risk. James C. Bateman Petroleum Services, Inc. dba "SEMCO", B-228252, Oct. 5, 1987, 87-2 CPD ¶ 337.

Although rejection of Air Quality's bid may add to the cost of this requirement; a nonresponsive bid may not be accepted, even though it would result in savings to the government, since acceptance would compromise the integrity of the competitive bidding system. Flex-Key Corp., B-229630, Dec. 10, 1987, 87-2 CPD ¶ 580.

Finally, in its comments on the agency report filed on April 14, the protester seems to argue for the first time that the solicitation's bid schedule is flawed. This contention is clearly untimely and will not be considered. A protest concerning an alleged impropriety in the solicitation which is apparent on the face of the solicitation must be filed prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel